IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 971 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHANTABEN LALITCHANDRA PARMAR

Versus

ZAHIRUDDIN AHMEDSHAH KADARI SAIYED

Appearance:

1. Special Civil Application No. 971 of 2003
MR YV BRAHMBHATT for Petitioner No. 1-2
RULE SERVED BY DS for Respondent No. 1-2
MR SANDIP C SHAH for Respondent No. 3

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 23/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE AKSHAY H.MEHTA)

The petitioners have filed this petition challenging the order passed by the MACT (M), Bharuch, dated 16th December 2002 below application at Exh.47 in MACP No.560 of 1996. The petitioners are the original claimants of the aforesaid claim case. It has been filed for obtaining compensation under Section 166 of the Motor Vehicles Act for the death of the husband of petitioner No.1 who has expired in the vehicular accident. By submitting the application at Exh.47, the petitioners have sought amendment of the claim which was originally filed before the Tribunal. The original claim is of Rs.8,80,000/- which is now sought to be enhanced to Rs.25,43,000/-. In the said application, other incidental amendments are also prayed for.

2. After hearing the learned Advocates for the respective parties, the Tribunal has rejected the said application. In the opinion of the Tribunal, there is no prima facie material on record to substantiate the increase of claim sought by the petitioners.

3. Today, we have heard Mr.Y.V.Brahmbhatt, learned Advocate for the petitioners and Mr.S.C.Shah, learned Advocate for respondent No.3. Mr.Brahmbhatt has contended that in view of the reasons stated in the application at Exh.47, the Tribunal ought to have granted it and ought to have permitted to the petitioners to enhance the claim. He has further submitted that so far the respondent Insurance Company is concerned, it has not only not seriously objected to the amendment being granted, but has made an endorsement on the application to the effect that while granting interest, the Tribunal may keep in view the fact that the present application has been submitted at a belated stage. As against that, Mr.Shah has submitted that the order passed by the Tribunal is proper and the application at Exh.47 is rightly turned down.

4. Having perused the record of this petition and also having carefully considered the rival submissions, it appears that the claim case has been filed by the petitioners on 12th August 1996 for claiming compensation for the death of one Lalitchandra Parmar who expired on 10th May 1996 in a vehicular accident. The claim made in the original petition is for Rs.8,80,000/-. The application at Exh.47 is dated 30th August 2002. Thus, it is filed after a period of little over six years.

Further, the factor which has been weighed with the Tribunal for rejecting the said application is that, in support of their application for enhancement of the claim, the petitioners have produced documentary evidence vide Mark 55/1 to 55/5. The said evidence does not serve any useful purpose so far the enhancement is concerned. In other words, the Tribunal has said that the aforesaid documentary evidence is produced without application of mind.

We are unable to subscribe to the view expressed by the Tribunal. The petitioners have produced certain documentary evidence which is yet to be proved and properly taken on record. We are informed that recording of the oral evidence has not yet begun. In view thereof, it is too early for the Tribunal to say that this evidence has no merit. Coupled with this, when the Insurance Company has not raised any serious objection to the amendment being granted, in our opinion, of course subject to keeping in view the fact that it has been submitted at a belated stage for the purpose of awarding interest on the enhanced amount, the application ought to have been allowed by the Tribunal.

5. For the reasons stated above, we quash and set aside the order passed by the MACT (M), Bharuch, dated 16th December 2002 and grant the amendment as prayed for by the petitioners in Application at Exh.47. We also make it very clear that in the event of granting interest on the enhanced amount, the Tribunal may take into consideration the fact that the application has been submitted six years after the filing of the claim petition. This petition is, therefore, allowed. Rule is made absolute, with no order as to costs. Office to send the writ of this order expeditiously.

(Kshitij R. Vyas, J.)

(Akshay H. Mehta, J.)
Sreeram.